IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.4360 OF 2006

Shri Harish Datta,)
Age: 51 years, the Proprietor)
of M/s.J1-KI Enterprises)
having its office at)
414, Jain Road, Opposite Jain)
Mandir, Bazar Road,)
Bandra (W), Mumbai 400 050.) ...Applicant

Versus

1. M/s.Parle Sales Services)
Private Limited, having)
its office at Western)
Express Highway, Chakala,)
Andheri (E), Mumbai 400 099.)

2. State of Maharashtra) ...Respondents

Shri Prakash Naik for the Applicant.
Shri K.P.Sreejith for the Respondent No.1.
Mrs M.M.Deshmukh, A.P.P for the State.

AND

CRIMINAL APPLICATION NO.4362 OF 2006

Shri Prakash Datta,)
Age: 46 years, the Proprietor)
of M/s.J1-KI Enterprises)
having its office at)
414, Jain Road, Opposite Jain)
Mandir, Bazar Road,)
Bandra (W), Mumbai 400 050.) ...Applicant

Versus

1. M/s.Parle Sales Services)
Private Limited, having)
its office at Western)
Express Highway, Chakala,)
Andheri (E), Mumbai 400 099.)

2. State of Maharashtra) ...Respondents

Shri Prakash Naik for the Applicant.
Shri K.P.Sreejith for the Respondent No.1.
Shri U.V.Nikam, A.P.P for the State.

CORAM : A. S. OKA, J.

DATE : DECEMBER 13, 2006.

ORAL JUDGMENT:

1. Rule. The learned Advocate for the first Respondent waives service. The learned A.P.P waives service for the second Respondent. Considering the facts and circumstances of the case, taken up for hearing forthwith.

2. The Applicant in both the Applications have been arraigned as accused in separate complaints filed by the first Respondent alleging commission of offence under section 138 of the Negotiable Instruments Act, 1881 read with section 420 of the Indian Penal Code. The Applicant filed revision Applications before the Sessions Court for challenging orders passed by the learned Magistrate in the said complaints directing issuance of non-bailable warrant against them. In the revision Applications the contention of the Applicants was that the original complaints have been already

dismissed by the learned Magistrate on 16th October, 2004. It appears that a submission was made before the Sessions Court on behalf of the first Respondent that the orders of dismissal of the complaints have been erroneously recorded and infact the complaints were never dismissed.

3. By the separate orders dated 30th September, 2006, the learned Additional Sessions Judge disposed of the revision Applications preferred by the Applicants. While setting aside the orders issuing non-bailable warrant, the learned judge held that the orders of dismissal of the complaints were wrongly passed. Therefore, the learned Judge restored the complaints by setting aside orders of dismissal.

4. The grievance of the learned counsel appearing for the Applicant is that in the revision Applications preferred by the Applicants, orders of dismissal could not have been set aside. It is submitted that the only remedy available for the first Respondent was of filing applications under section 378(4) of the Code of Criminal Procedure, 1973.

5. The learned Advocate appearing for the first Respondent fairly states that the part of the impugned orders by which the complaints have been ordered to be restored may be set aside with a liberty to the first Respondent to take out appropriate proceedings for challenging the orders by which the complaints have been shown as dismissed.

6. In view of this position, the Applications are disposed of by passing the following order:

(i) The impugned Orders dated 30th September, 2006 are modified by directing that clause Nos.2 to 4 of the operative part of the orders will stand deleted.

(ii) It will be open for the first Respondent to take out appropriate proceedings for challenging the orders dated 16th October, 2004 passed by the learned Magistrate by which the complaints filed by the first Respondent have been shown as dismissed. All contentions of the parties in such proceedings are kept open.

(iii) Applications are disposed of in above terms.

JUDGE